

Example 6. (i) Facts. On February 1, 1997, a bill is introduced in Congress that would affect Company E. Employees in E's legislative affairs department, as is customary, prepare a brief summary of the bill and periodically confirm the procedural status of the bill through conversations with employees and members of Congress. On March 31, 1997, the head of E's legislative affairs department meets with E's President to request that B, a chemist, temporarily help the legislative affairs department analyze the bill. The President agrees, and suggests that B also be assigned to draft a position letter in opposition to the bill. Employees of the legislative affairs department continue to confirm periodically the procedural status of the bill. On October 31, 1997, B's position letter in opposition to the bill is delivered to members of Congress.

(ii) *Analysis.* B's letter is a lobbying communication because it refers to and reflects a view on specific legislation. Under paragraph (c)(3)(i) of this section, the assignment of B to assist the legislative affairs department in analyzing the bill and in drafting a position letter in opposition to the bill evidences a purpose to influence legislation. Neither the activity of periodically confirming the procedural status of the bill nor the activity of preparing the routine, brief summary of the bill before March 31 constitutes influencing legislation. In contrast, periodically confirming the procedural status of the bill on or after March 31 relates to the same subject as, and is close in time to, the lobbying communication and is used for no nonlobbying purpose. Consequently, after March 31, E determined the procedural status of the bill for the purpose of supporting the lobbying communication by B.

(d) *Lobbying communication made by another.* If a taxpayer engages in activities for a purpose of supporting a lobbying communication to be made by another person (or by a group of persons), the taxpayer's activities are treated under paragraph (b) of this section as influencing legislation. For example, if a taxpayer or an employee of the taxpayer (as a volunteer or otherwise) engages in an activity to assist a trade association in preparing its lobbying communication, the taxpayer's activities are influencing legislation even if the lobbying communication is made by the trade association and not the taxpayer. If, however, the taxpayer's employee, acting outside the employee's scope of employment, volunteers to engage in those activities, then the taxpayer is not influencing legislation.

(e) *No lobbying communication.* Paragraph (e) of this section applies if a taxpayer engages in an activity for a purpose of making or supporting a lobbying communication, but no lobbying communication that the activity supports has yet been made.

(1) *Before the filing date.* Under this paragraph (e)(1), if on the filing date of

the return for any taxable year the taxpayer no longer expects, under any reasonably foreseeable circumstances, that a lobbying communication will be made that is supported by the activity, then the taxpayer will be treated as if it did not engage in the activity for a purpose of making or supporting a lobbying communication. Thus, the taxpayer need not treat any amount allocated to that activity for that year under § 1.162-28 as an amount to which section 162(e)(1)(A) applies. The filing date for purposes of paragraph (e) of this section is the earlier of the time the taxpayer files its timely return for the year or the due date of the timely return.

(2) *After the filing date—(i) In general.* If, at any time after the filing date, the taxpayer no longer expects, under any reasonably foreseeable circumstances, that a lobbying communication will be made that is supported by the activity, then any amount previously allocated under § 1.162-28 to the activity and disallowed under section 162(e)(1)(A) is treated as an amount that is not subject to section 162(e)(1)(A) and that is paid or incurred only at the time the taxpayer no longer expects that a lobbying communication will be made.

(ii) *Special rule for certain tax-exempt organizations.* For a tax-exempt organization subject to section 6033(e), the amounts described in paragraph (e)(2)(i) of this section are treated as reducing (but not below zero) its expenditures to which section 162(e)(1) applies beginning with that year and continuing for subsequent years to the extent not treated in prior years as reducing those expenditures.

(f) *Anti-avoidance rule.* If a taxpayer, alone or with others, structures its activities with a principal purpose of achieving results that are unreasonable in light of the purposes of section 162(e)(1)(A) and section 6033(e), the Commissioner can recast the taxpayer's activities for federal tax purposes as appropriate to achieve tax results that are consistent with the intent of section 162(e)(1)(A), section 6033(e) (if applicable), and this section, and the pertinent facts and circumstances.

(g) *Taxpayer defined.* For purposes of this section, a taxpayer includes a tax-exempt organization subject to section 6033(e).

(h) *Effective date.* This section is effective for amounts paid or incurred on or after July 21, 1995. Taxpayers must adopt a reasonable interpretation

of section 162(e)(1)(A) for amounts paid or incurred before this date.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: June 29, 1995

Leslie Samuels,
Assistant Secretary of the Treasury.
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26 CFR Parts 1, 18 and 602

[TD 8600]

RIN 1545-AE86

Definition of an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the definition of an *S corporation* under section 1361 of the Internal Revenue Code of 1986. Changes to the applicable tax law were made by the Subchapter S Revision Act of 1982, the Tax Reform Act of 1984, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989. The final regulations provide guidance on the requirements to be an S corporation.

EFFECTIVE DATE: These regulations are effective July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Laura Howell, telephone 202-622-3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-0731. The estimated annual burden per respondent varies from 30 minutes to 60 minutes, depending on individual circumstances, with an estimated average of 45 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On October 7, 1986, the IRS published in the **Federal Register** a notice of proposed rulemaking containing proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1361 of the Internal Revenue Code (Code). These amendments were proposed to conform the regulations to sections 2 and 6 of the Subchapter S Revision Act of 1982 and to section 721(c) and (f) of the Tax Reform Act of 1984. After consideration of all comments received by Treasury and the IRS regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision. The final regulations also reflect the amendments made to section 1361 by sections 901(d)(4)(G) and 1879(m) of the Tax Reform Act of 1986, section 1018(q)(2) of the Technical and Miscellaneous Revenue Act of 1988, and section 7811(c)(6) of the Omnibus Budget Reconciliation Act of 1989.

On January 26, 1983, the IRS published temporary regulation § 18.1361-1 under section 1361(d)(2) of the Internal Revenue Code of 1954 (TD 7872) in the **Federal Register** to provide guidance as to the election to treat a qualified subchapter S trust as a wholly-owned grantor trust. The temporary regulations are adopted as revised by this Treasury decision, and § 18.1361-1 of the temporary regulations is removed.

Explanation of Provisions

The proposed regulations define a domestic corporation as a corporation as defined in section 7701(a)(2) created or organized in the United States or under the law of the United States or any state or territory. Commentators recommended that this definition be clarified to provide that an association, unincorporated but taxable as a corporation, may elect to be treated as an S corporation. The final regulations revise the definition of a domestic corporation for purposes of the S corporation provisions by providing that an entity that is classified as a corporation taxable as a corporation under § 301.7701-2 of the Procedure and Administration Regulations may elect to be treated as an S corporation provided it meets the other requirements of a small business corporation.

Section 1361(b)(2)(C) provides that an insurance company subject to tax under subchapter L may not elect to be treated as an S corporation. However, the Subchapter S Revision Act of 1982 (the Act) provided a grandfather rule for a qualified casualty insurance electing small business corporation. The

proposed regulations provide the grandfather rules for a qualified casualty insurance electing small business corporation. Additionally, the Act provided a grandfather rule with regard to the affiliation rule under section 1361(b)(2)(A) for a corporation that is affiliated with a foreign corporation or DISC. The final regulations remove the grandfather rules for a qualified casualty insurance electing small business corporation since they are no longer generally applicable. However, corporations that fit within those grandfather rules and certain corporations having oil and gas production should refer to section 6(c) of Public Law 97-354 for appropriate guidance.

The proposed regulations provide a special rule for a corporation having a shareholder who has a legal life estate or usufruct interest in the stock. The proposed regulations provide requirements for such shareholder to qualify as an eligible shareholder. Upon further consideration by the IRS and Treasury, the final regulations remove this special rule from the proposed regulations. The issue will be addressed in other published guidance.

The proposed regulations provide that persons for whom stock of a corporation is held by a nominee, guardian, custodian, or agent are generally considered to be shareholders of the corporation, but if stock is owned by a partnership, the partnership (and not its partners) is considered to be the shareholder and the corporation does not qualify as a small business corporation. Commentators questioned why stock which is held by a partnership as nominee for an individual should not be considered to be owned by the individual rather than the partnership for purposes of determining whether a corporation qualifies as an S corporation. Commentators suggested that this point be clarified. The final regulations adopt this suggestion by providing that a partnership may hold S corporation stock as a nominee for a person who will be treated as the shareholder.

The proposed regulations contain a rule that prohibits a nonresident alien from being an eligible S corporation shareholder. Commentators recommended an additional rule that would warn that a U.S. citizen married to a nonresident alien who, under applicable local law, has an interest in the U.S. citizen's stock could not be a shareholder of an S corporation. The final regulations provide that, if a U.S. shareholder's nonresident alien spouse has a current ownership interest in the shareholder's stock under applicable

local law, the S corporation has an ineligible shareholder and therefore does not qualify as a small business corporation. For example, the laws of a nonresident alien spouse's country may give the nonresident alien spouse a community property interest in the U.S. spouse's property. In that case, the corporation would not constitute a small business corporation as of the date the nonresident spouse acquired an interest in the stock of the corporation, and the corporation's S election would terminate. See *Ward v. United States*, 661 F.2d 226 (Ct. Cl. 1981). If the termination is inadvertent, relief may be available under section 1362(f) of the Code.

The final regulations add and reserve § 1.1361-1(g)(2) addressing the status of dual residents. When the proposed regulations under § 301.7701(b)-7(a)(4) (published in the **Federal Register** (26 CFR 518) on April 27, 1992) are finalized, this section will contain a cross reference to those final regulations.

For purposes of section 1361(c)(2)(A)(i), the proposed regulations define a subpart E trust as a trust all of which (income and corpus) is treated (under subpart E, part I, subchapter J, chapter 1 of the Code) as owned by one individual (whether or not the grantor) who is a citizen or resident of the United States. Commentators expressed concern regarding the definition of a subpart E trust and suggested that for purposes of determining whether a trust meets the subpart E requirements under section 1361(c)(2)(A)(i), the relevant period for making that determination is the period during which the trust holds S corporation stock. The final regulations adopt the commentators' suggestion. Therefore, whether the trust is a wholly-owned trust during any period in which the trust does not hold S corporation stock is not relevant. In addition, the final regulations define a subpart E trust as a trust all of which is treated as owned by an individual. This definition tracks the language of section 1361(c)(2)(A)(i). Therefore, the trust is a permitted shareholder if the grantor or another person includes in computing taxable income and credits all of the trust's items of income, deductions, and credits against tax under the rules in § 1.671-3.

The final regulations clarify that a voting trust is a permitted shareholder only if it is a subpart E trust. Further, the final regulations add rules concerning who is treated as the shareholder for purposes of sections 1366, 1367, and 1368 when certain permitted trusts hold stock of an S

corporation. For example, when stock of an S corporation is held by a trust that ceases to be a subpart E trust upon the death of the deemed owner, and the trust is a permitted shareholder for a 60-day period (or a 2-year period if applicable) under section 1361(c)(2)(A)(ii), the trust (and not the estate of the deemed owner) is treated as the shareholder for purposes of sections 1366, 1367, and 1368, even though the estate is treated as the shareholder for purposes of section 1361(b)(1).

The final regulations provide that if a husband and wife file a joint return, are both U.S. citizens or residents, and are both designated beneficiaries of a trust, they are treated as one beneficiary for purposes of meeting the requirements of a qualified subchapter S trust (QSST). In addition, the final regulations add a rule that if any distribution from the trust satisfies the grantor's legal obligation to support the income beneficiary, the trust ceases to be a QSST as of the date of the distribution because under section 677(b) the grantor would be treated either as the owner of the ordinary income portion of the trust or as a beneficiary of the trust under section 662 and § 1.662(a)-4.

The proposed regulations provide the general rule that would deny a trust qualification as a QSST if the terms of the trust do not preclude the possibility that in the future the trust may not meet the requirements of section 1361(d)(3)(A). Commentators suggested that the general rule be deleted because it should be sufficient if a trust currently complies with those requirements. For example, it was suggested that if the income beneficiary has a lifetime special power to appoint the income and corpus of the trust to another person, the trust would qualify as a QSST until the power is exercised. The final regulations do not adopt this suggestion because the statute clearly requires that the terms of the trust instrument provide that, during the life of the current income beneficiary, there be only one income beneficiary, and that any corpus distributed may be distributed only to such beneficiary. The statute generally precludes the possibility of future non-compliance. However, because of the concern expressed that a trust instrument could not feasibly preclude the addition to a trust of a beneficiary that is mandated by a court of law, the final regulations provide for this exception to the general rule.

Commentators requested guidance as to whether a qualified terminable interest property (QTIP) trust qualifies as a permitted shareholder of an S

corporation. The final regulations provide that a trust treated as a QTIP trust under section 2056(b)(7) will qualify as a QSST, and a trust treated as a QTIP trust under section 2523(f) may qualify as a subpart E trust if wholly-owned by the grantor. In the latter case, the trust does not satisfy all of the QSST requirements because the grantor is treated as the owner of the income portion of the trust under sections 672(e) and 677.

Commentators also requested guidance as to whether an income beneficiary of a trust that meets the QSST requirements, and who is treated as the owner of all of the trust, or the portion of the trust that consists of S corporation stock under subpart E (and thus is a permitted shareholder under section 1361(c)(2)(A)(i)), may nevertheless make a protective QSST election. The final regulations add provisions for a protective QSST election for income beneficiaries of certain grantor trusts.

The final regulations also change the result in Rev. Rul. 92-84, 1992-2 C.B. 216. Rev. Rul. 92-84 holds that if a QSST sells its S corporation stock, the current income beneficiary and not the trust must recognize any gain or loss. After the publication of Rev. Rul. 92-84, practitioners expressed concern with respect to the sale of the stock by a QSST in an installment sale.

Practitioners questioned whether the trust could effectively use the installment method under section 453 to report gain realized on the sale of the stock and expressed concern about how the IRS would treat an installment sale of S stock by a QSST. Practitioners suggested that since the income beneficiary was treated as the owner of the stock sold, the income beneficiary would be treated as the owner of the installment obligation received in exchange for the sale of the stock. However, concern was expressed that because the QSST ceases to be a QSST as to the S corporation stock that was sold, the income beneficiary would no longer be treated as the owner of the installment obligation held by the trust and there may have occurred a disposition of the installment obligation under section 453B(a).

On further consideration, the IRS and Treasury have determined that the income beneficiary of a QSST who is a section 678 deemed owner of the S corporation stock solely by reason of section 1361(d)(1) should not be treated as the owner of the consideration received by a QSST upon its disposition of S corporation stock. Under the final regulations, the consideration is treated as received by the trust in its status as

a separate taxpayer under section 641. Thus, for example, any gain recognized on a sale of the S corporation stock is the gross income of the trust. Similarly, the trust may report any gain realized upon the sale under section 453 if the sale otherwise qualifies as an installment sale. This provision of the final regulations reflects an interpretation of section 1361(d)(1) and has no bearing upon the operation or effect of the principles of sections 671 through 679 beyond the context of a QSST.

If a QSST has sold or otherwise disposed of all or a portion of its S corporation stock in a tax year that is open under the statutes for both the QSST and the income beneficiary but before the effective date of these final regulations, the QSST and the income beneficiary may treat the transaction under Rev. Rul. 92-84 or under these final regulations. However, the QSST and the income beneficiary must take consistent reporting positions. The final regulations require that the QSST and the income beneficiary must state on their respective returns that they are taking consistent reporting positions.

Effect on Other Documents

Rev. Rul. 92-84, 1992-2 C.B. 216 is obsolete as of July 21, 1995.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required.

Drafting Information: The principal author of these final regulations is Laura Howell, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 1 and 18

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 18 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805. * * *

Sections 1.1361-1(j) (6), (10) and (11) also issued under 26 U.S.C. 1361(d)(2)(B)(iii). * * *

Par. 2. Section 1.1361-0 is revised to read as follows:

§ 1.1361-0 Table of contents.

This section lists captions contained in § 1.1361-1.

§ 1.1361-1 S Corporation defined.

- (a) In general.
- (b) Small business corporation defined.
 - (1) In general.
 - (2) Estate in bankruptcy.
 - (3) Treatment of restricted stock.
 - (4) Treatment of deferred compensation plans.
 - (5) Treatment of straight debt.
 - (6) Effective date provisions.
 - (c) Domestic corporation.
 - (d) Ineligible corporation.
 - (1) General rule.
 - (2) Exceptions.
 - (3) Inactive corporation exception.
 - (e) Number of shareholders.
 - (1) General rule.
 - (2) Special rules relating to stock owned by husband and wife.
 - (f) Shareholder must be an individual or estate.
 - (g) No nonresident alien shareholder.
 - (1) General rule.
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 - (h) Special rules relating to trusts.
 - (1) General rule.
 - (2) Foreign trust.
 - (3) Determination of shareholders.
 - (i) [Reserved]
 - (j) Qualified subchapter S trust.
 - (1) Definition.
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 - (3) Separate and independent shares of a trust.
 - (k) Qualified terminable interest property trust.
 - (5) Ceasing to meet the QSST requirements.
 - (6) Qualified subchapter S trust election.
 - (7) Treatment as shareholder.
 - (8) Coordination with grantor trust rules.
 - (9) Successive income beneficiary.
 - (10) Affirmative refusal to consent.
 - (11) Revocation of QSST election.
 - (k)(1) Examples.
 - (2) Effective date.
 - (l) Classes of stock.
 - (1) General rule.
 - (2) Determination of whether stock confers identical rights to distribution and liquidation proceeds.
 - (3) Stock taken into account.
 - (4) Other instruments, obligations, or arrangements treated as a second class of stock.
 - (5) Straight debt safe harbor.
 - (6) Inadvertent terminations.
 - (7) Effective date

Par. 3. Section 1.1361-1 is amended by adding paragraphs (a), and (c) through (k) to read as follows:

§ 1.1356-1 S corporation defined.

(a) *In general.* For purposes of this title, with respect to any taxable year—
(1) The term *S corporation* means a small business corporation (as defined in paragraph (b) of this section) for which an election under section 1362(a) is in effect for that taxable year.

(2) The term *C corporation* means a corporation that is not an S corporation for that taxable year.

* * * * *

(c) *Domestic corporation.* For purposes of paragraph (b) of this section, the term *domestic corporation* means a domestic corporation as defined in § 301.7701-5 of this chapter, and the term *corporation* includes an entity that is classified as an association taxable as a corporation under § 301.7701-2 of this chapter.

(d) *Ineligible corporation*—(1) *General rule.* Except as otherwise provided in this paragraph (d), the term *ineligible corporation* means a corporation that is—

(i) A member of an affiliated group (determined under section 1504 without regard to any exception contained in section 1504(b)), whether or not that affiliated group has ever filed a consolidated return;

(ii) A financial institution to which section 585 applies (or would apply but for section 585(c)) or to which section 593 applies;

(iii) An insurance company subject to tax under subchapter L;

(iv) A corporation to which an election under section 936 applies; or
(v) A DISC or former DISC.

(2) *Exceptions.* See the special rules and exceptions provided in sections 6(c)(2), (3) and (4) of Public Law 97-354 that are applicable for certain casualty insurance companies and qualified oil corporations.

(3) *Inactive corporation exception.* (i) For purposes of paragraph (d)(1)(i) of this section, a corporation (parent corporation) will not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation (subsidiary corporation) if the subsidiary corporation—

(A) Has not begun business at any time on or before the close of that period; and

(B) Does not have gross income for that period.

(ii) The determination under paragraph (d)(3)(i) of this section of the date on which a subsidiary corporation

begins business is made by taking into account all the facts and circumstances of the particular case. A corporation has not begun business, however, merely because it is in existence. Ordinarily, a corporation begins business when it starts the business operations for which it was organized. Mere organizational activities, such as the obtaining of the corporate charter, are not alone sufficient to constitute the beginning of business. An example of a corporation that has not begun business is a corporation incorporated for the sole purpose of reserving a corporate name in a state or states in which the parent corporation is not doing business. If the activities of a corporation have advanced to the extent necessary to establish the nature of its business operations, however, the corporation is deemed to have begun business. For example, a corporation that acquires operating assets necessary for the type of business contemplated may be deemed to have begun business.

(iii) If a subsidiary corporation ceases to be an inactive corporation as defined in paragraph (d)(3)(i) of this section, then the parent corporation's election under section 1362(a) will terminate on the earlier of the first day that the subsidiary corporation begins business, or the first day, determined under the subsidiary corporation's method of accounting, that the subsidiary corporation realizes gross income.

(iv) The application of paragraph (d)(3) of this section is illustrated by the following examples:

Example 1. In 1996, Corporation P, a C corporation, owns all of the stock of Corporation Q. P and Q both use the calendar year as their taxable year. For purposes of paragraph (d)(1)(i) of this section, P would not be considered at any time during 1996 to be a member of an affiliated group solely by reason of its ownership of Q's stock if Q has not begun business at any time on or before January 1, 1997, and has no gross income for calendar year 1996 or any prior calendar year. Thus, P could qualify as a small business corporation during 1996 if it meets the other requirements provided in section 1361(b). Assuming that P's ownership of Q stock remains unchanged, P would cease to be a small business corporation on the day that Q either begins business or realizes gross income (determined under Q's method of accounting), whichever day occurs earlier.

Example 2. Assume the same facts as in *Example 1*, except that Corporation Q had begun business prior to 1995, but became inactive in 1995. For purposes of paragraph (d)(1)(i) of this section, P is considered to be a member of an affiliated group because Q had begun business prior to becoming inactive in 1995. Therefore, even though Q was inactive in 1996, P is not eligible to make the S election until P liquidates Q.

(e) *Number of shareholders*—(1) *General rule.* A corporation does not

qualify as a small business corporation if it has more than 35 shareholders. Ordinarily, the person who would have to include in gross income dividends distributed with respect to the stock of the corporation (if the corporation were a C corporation) is considered to be the shareholder of the corporation. For example, if stock (owned other than by a husband and wife) is owned by tenants in common or joint tenants, each tenant in common or joint tenant is generally considered to be a shareholder of the corporation. (For special rules relating to stock owned by husband and wife, see paragraph (e)(2) of this section; for special rules relating to restricted stock, see paragraphs (b) (3) and (6) of this section.) The person for whom stock of a corporation is held by a nominee, guardian, custodian, or an agent is considered to be the shareholder of the corporation for purposes of this paragraph (e) and paragraphs (f) and (g) of this section. For example, a partnership may be a nominee of S corporation stock for a person who qualifies as a shareholder of an S corporation. However, if the partnership is the beneficial owner of the stock, then the partnership is the shareholder, and the corporation does not qualify as a small business corporation. In addition, in the case of stock held for a minor under a uniform gifts to minors or similar statute, the minor and not the custodian is the shareholder. For purposes of this paragraph (e) and paragraphs (f) and (g) of this section, if stock is held by a decedent's estate, the estate (and not the beneficiaries of the estate) is considered to be the shareholder; however, if stock is held by a subpart E trust (which includes voting trusts), the deemed owner is considered to be the shareholder.

(2) *Special rules relating to stock owned by husband and wife.* For purposes of paragraph (e)(1) of this section, stock owned by a husband and wife (or by either or both of their estates) is treated as if owned by one shareholder, regardless of the form in which they own the stock. For example, if husband and wife are owners of a subpart E trust, they will be treated as one individual. Both husband and wife must be U.S. citizens or residents, and a decedent spouse's estate must not be a foreign estate as defined in section 7701(a)(31). The treatment described in this paragraph (e)(2) will cease upon dissolution of the marriage for any reason other than death.

(f) *Shareholder must be an individual or estate.* Except as otherwise provided in paragraph (e)(1) (relating to nominees and paragraph (h) (relating to certain

trusts) of this section, a corporation in which any shareholder is a corporation, partnership, or trust does not qualify as a small business corporation.

(g) *Nonresident alien shareholder—(1) General rule.* (i) A corporation having a shareholder who is a nonresident alien as defined in section 7701(b)(1)(B) does not qualify as a small business corporation. If a U.S. shareholder's spouse is a nonresident alien who has a current ownership interest (as opposed, for example, to a survivorship interest) in the stock of the corporation by reason of any applicable law, such as a state community property law or a foreign country's law, the corporation does not qualify as a small business corporation from the time the nonresident alien spouse acquires the interest in the stock. If a corporation's S election is inadvertently terminated as a result of a nonresident alien spouse being considered a shareholder, the corporation may request relief under section 1362(f).

(ii) The following examples illustrate this paragraph (g)(1)(i):

Example 1. In 1990, W, a U.S. citizen, married H, a citizen of a foreign country. At all times H is a nonresident alien under section 7701(b)(1)(B). Under the foreign country's law, all property acquired by a husband and wife during the existence of the marriage is community property and owned jointly by the husband and wife. In 1996 while residing in the foreign country, W formed X, a U.S. corporation, and X simultaneously filed an election to be an S corporation. X issued all of its outstanding stock in W's name. Under the foreign country's law, X's stock became the community property of and jointly owned by H and W. Thus, X does not meet the definition of a small business corporation and therefore could not file a valid S election because H, a nonresident alien, has a current interest in the stock.

Example 2. Assume the same facts as *Example 1*, except that in 1991, W and H filed a section 6013(g) election allowing them to file a joint U.S. tax return and causing H to be treated as a U.S. resident for purposes of chapters 1, 5, and 24 of the Internal Revenue Code. The section 6013(g) election applies to the taxable year for which made and to all subsequent taxable years until terminated. Because H is treated as a U.S. resident under section 6013(g), X does meet the definition of a small business corporation. Thus, the election filed by X to be an S corporation is valid.

(2) *Special rule for dual residents.* [Reserved]

(h) *Special rules relating to trusts—(1) General rule.* In general, a trust is not a permitted small business corporation shareholder. However, except as provided in paragraph (h)(2) of this section, the following trusts are permitted shareholders:

(i) *Qualified Subpart E trust.* A trust all of which is treated (under subpart E, part I, subchapter J, chapter 1) as owned by an individual (whether or not the grantor) who is a citizen or resident of the United States (a qualified subpart E trust). This requirement applies only during the period that the trust holds S corporation stock.

(ii) *Subpart E trust ceasing to be a qualified subpart E trust after the death of deemed owner.* A trust which was a qualified subpart E trust immediately before the death of the deemed owner and which continues in existence after the death of the deemed owner, but only for the 60-day period beginning on the day of the deemed owner's death. However, if a trust is described in the preceding sentence and the entire corpus of the trust is includible in the gross estate of the deemed owner, the trust is a permitted shareholder for the 2-year period beginning on the day of the deemed owner's death. A trust is considered to continue in existence if the trust continues to hold the stock of the S corporation during the period of administration of the decedent's estate or if, after the period of administration, the trust continues to hold the stock pursuant to the terms of the will or the trust agreement. See § 1.641(b)-3 for rules concerning the termination of estates and trusts for federal income tax purposes. If the trust consists of community property, and the decedent's community property interest in the trust is includible in the decedent's gross estate under chapter 11 (section 2001 and following, relating to estate tax), then the entire corpus of the trust will be deemed includible in the decedent's gross estate. Further, for the purpose of determining whether the entire corpus of the trust is includible in the gross estate of the deemed owner, if the decedent's spouse was treated as an owner of a portion of the trust under subpart E immediately before the decedent's death, the surviving spouse's portion is disregarded.

(iii) *Electing Qualified subchapter S trusts.* A qualified subchapter S trust (QSST) that has a section 1361(d)(2) election in effect (an electing QSST). See paragraph (j) of this section for rules concerning QSSTs including the manner for making the section 1361(d)(2) election.

(iv) *Testamentary trusts.* A trust (other than a qualified subpart E trust or an electing QSST) to which S corporation stock is transferred pursuant to the terms of a will, but only for the 60-day period beginning on the day the stock is transferred to the trust.

(v) *Qualified Voting trusts.* A trust created primarily to exercise the voting

power of S corporation stock transferred to it. To qualify as a voting trust for purposes of this section (a qualified voting trust), the beneficial owners must be treated as the owners of their respective portions of the trust under subpart E and the trust must have been created pursuant to a written trust agreement entered into by the shareholders, that—

(A) Delegates to one or more trustees the right to vote;

(B) Requires all distributions with respect to the stock of the corporation held by the trust to be paid to, or on behalf of, the beneficial owners of that stock;

(C) Requires title and possession of that stock to be delivered to those beneficial owners upon termination of the trust; and

(D) Terminates, under its terms or by state law, on or before a specific date or event.

(2) *Foreign trust.* For purposes of paragraph (h)(1) of this section, in any case where stock is held by a foreign trust as defined in section 7701(a)(31), the trust is considered to be the shareholder and is an ineligible shareholder. Thus, even if a foreign trust qualifies as a subpart E trust (e.g., a qualified voting trust), any corporation in which the trust holds stock does not qualify as a small business corporation.

(3) *Determination of shareholders—(i) General rule.* For purposes of paragraph (b) of this section (qualification as a small business corporation), and, except as provided in paragraph (h)(3)(ii) of this section, for purposes of sections 1366 (relating to the pass-through of items of income, loss, deduction, or credit), 1367 (relating to adjustments to basis of shareholder's stock), and 1368 (relating to distributions), the shareholder of S corporation stock held by a trust that is a permitted shareholder under paragraph (h)(1) of this section is determined as follows:

(A) If stock is held by a qualified subpart E trust, the deemed owner of the trust is treated as the shareholder.

(B) If stock is held by a trust defined in paragraph (h)(1)(ii) of this section, the estate of the deemed owner is generally treated as the shareholder as of the day of the deemed owner's death. However, if stock is held by such a trust in a community property state, the decedent's estate is the shareholder only of the portion of the trust included in the decedent's gross estate (and the surviving spouse continues to be the shareholder of the portion of the trust owned by that spouse under the applicable state's community property law).

The estate ordinarily will cease to be treated as the shareholder upon the earlier of the transfer of the stock by the trust or the expiration of the 60-day period (or, if applicable, the 2-year period) beginning on the day of the deemed owner's death. If the trust qualifies and becomes an electing QSST, the beneficiary and not the estate is treated as the shareholder as of the effective date of the QSST election, and the rules provided in paragraph (j)(7) of this section apply.

(C) If stock is held by an electing QSST, see paragraph (j)(7) of this section for the rules on who is treated as the shareholder.

(D) If stock is transferred to a testamentary trust (other than a qualified subpart E trust or an electing QSST), the estate of the testator is treated as the shareholder until the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the day that the stock is transferred to the trust.

(E) If stock is held by a qualified voting trust, each beneficial owner of the stock, as determined under subpart E, is treated as a shareholder with respect to the owner's proportionate share of the stock held by the trust.

(ii) *Exceptions.* Solely for purposes of section 1366, 1367, and 1368 the shareholder of S corporation stock held by a trust is determined as follows—

(A) If stock is held by a trust (as defined in paragraph (h)(1)(ii) of this section) that does not qualify as a QSST, the trust is treated as the shareholder. If the trust continues to own the stock after the expiration of the 60-day period (or, if applicable, the 2-year period), the corporation's S election will terminate unless the trust is otherwise a permitted shareholder. If the trust is a QSST described in section 1361(d) and the income beneficiary of the trust makes a timely QSST election, the beneficiary and not the trust is treated as the shareholder from the effective date of the QSST election; and

(B) If stock is transferred to a testamentary trust described in paragraph (h)(1)(iii) of this section (other than a qualified subpart E trust or a trust that has a QSST election in effect), the trust is treated as the shareholder. If the trust continues to own the stock after the expiration of the 60-day period, the corporation's S election will terminate unless the trust otherwise qualifies as a permitted shareholder.

(i) [Reserved]

(j) *Qualified subchapter S trust—(1) Definition.* A qualified subchapter S trust (QSST) is a trust (whether intervivos or testamentary), other than a

foreign trust described in section 7701(a)(31), that satisfies the following requirements:

(i) All of the income (within the meaning of § 1.643(b)–1) of the trust is distributed (or is required to be distributed) currently to one individual who is a citizen or resident of the United States. For purposes of the preceding sentence, unless otherwise provided under local law (including pertinent provisions of the governing instrument that are effective under local law), income of the trust includes distributions to the trust from the S corporation for the taxable year in question, but does not include the trust's pro rata share of the S corporation's items of income, loss, deduction, or credit determined under section 1366. See §§ 1.651(a)–2(a) and 1.663(b)–1(a) for rules relating to the determination of whether all of the income of a trust is distributed (or is required to be distributed) currently. If under the terms of the trust income is not required to be distributed currently, the trustee may elect under section 663(b) to consider a distribution made in the first 65 days of a taxable year as made on the last day of the preceding taxable year. See section 663(b) and § 1.663(b)–2 for rules on the time and manner for making the election. The income distribution requirement must be satisfied for the taxable year of the trust or for that part of the trust's taxable year during which it holds S corporation stock.

(ii) The terms of the trust must require that—

(A) During the life of the current income beneficiary, there will be only one income beneficiary of the trust;

(B) Any corpus distributed during the life of the current income beneficiary may be distributed only to that income beneficiary;

(C) The current income beneficiary's income interest in the trust will terminate on the earlier of that income beneficiary's death or the termination of the trust; and

(D) Upon termination of the trust during the life of the current income beneficiary, the trust will distribute all of its assets to that income beneficiary.

(iii) The terms of the trust must satisfy the requirements of paragraph (j)(1)(ii) of this section from the date the QSST election is made or from the effective date of the QSST election, whichever is earlier, throughout the entire period that the current income beneficiary and any successor income beneficiary is the income beneficiary of the trust. If the terms of the trust do not preclude the possibility that any of the requirements stated in paragraph (j)(1)(ii) of this

section will not be met, the trust will not qualify as a QSST. For example, if the terms of the trust are silent with respect to corpus distributions, and distributions of corpus to a person other than the current income beneficiary are permitted under local law during the life of the current income beneficiary, then the terms of the trust do not preclude the possibility that corpus may be distributed to a person other than the current income beneficiary and, therefore, the trust is not a QSST.

(2) *Special rules*—(i) If a husband and wife are income beneficiaries of the same trust, the husband and wife file a joint return, and each is a U.S. citizen or resident, the husband and wife are treated as one beneficiary for purposes of paragraph (j) of this section. If a husband and wife are treated by the preceding sentence as one beneficiary, any action required by this section to be taken by an income beneficiary requires joinder of both of them. For example, each spouse must sign the QSST election, continue to be a U.S. citizen or resident, and continue to file joint returns for the entire period that the QSST election is in effect.

(ii)(A) *Terms of the trust and applicable local law.* The determination of whether the terms of a trust meet all of the requirements under paragraph (j)(1)(ii) of this section depends upon the terms of the trust instrument and the applicable local law. For example, a trust whose governing instrument provides that A is the sole income beneficiary of the trust is, nevertheless, considered to have two income beneficiaries if, under the applicable local law, A and B are considered to be the income beneficiaries of the trust.

(B) *Legal obligation to support.* If under local law a distribution to the income beneficiary is in satisfaction of the grantor's legal obligation of support to that income beneficiary, the trust will not qualify as a QSST as of the date of distribution because, under section 677(b), if income is distributed, the grantor will be treated as the owner of the ordinary income portion of the trust or, if trust corpus is distributed, the grantor will be treated as a beneficiary under section 662. See § 1.677(b)–1 for rules on the treatment of trusts for support and § 1.662(a)–4 for rules concerning amounts used in discharge of a legal obligation.

(C) *Example.* The following example illustrates the rules of paragraph (j)(2)(ii)(B) of this section:

Example. F creates a trust for the benefit of F's minor child, G. Under the terms of the trust, all income is payable to G until the trust terminates on the earlier of G's attaining age 35 or G's death. Upon the termination of

the trust, all corpus must be distributed to G or G's estate. The trust includes all of the provisions prescribed by section 1361(d)(3)(A) and paragraph (j)(1)(ii) of this section, but does not preclude the trustee from making income distributions to G that will be in satisfaction of F's legal obligation to support G. Under the applicable local law, distributions of trust income to G will satisfy F's legal obligation to support G. If the trustee distributes income to G in satisfaction of F's legal obligation to support G, the trust will not qualify as a QSST because F will be treated as the owner of the ordinary income portion of the trust. Further, the trust will not be a qualified subpart E trust because the trust will be subject to tax on the income allocable to corpus.

(iii) If, under the terms of the trust, a person (including the income beneficiary) has a special power to appoint, during the life of the income beneficiary, trust income or corpus to any person other than the current income beneficiary, the trust will not qualify as a QSST. However, if the power of appointment results in the grantor being treated as the owner of the entire trust under the rules of subpart E, the trust may be a permitted shareholder under section 1361 (c)(2)(A)(i) and paragraph (h)(1)(i) of this section.

(iv) If the terms of a trust or local law do not preclude the current income beneficiary from transferring the beneficiary's interest in the trust or do not preclude a person other than the current income beneficiary named in the trust instrument from being treated as a beneficiary of the trust under § 1.643(c)–1, the trust will still qualify as a QSST. However, if the income beneficiary transfers or assigns the income interest or a portion of the income interest to another, the trust may no longer qualify as a QSST, depending on the facts and circumstances, because any transferee of the current income beneficiary's income interest and any person treated as a beneficiary under § 1.643(c)–1 will be treated as a current income beneficiary for purposes of paragraph (j)(1)(ii) of this section and the trust may no longer meet the QSST requirements.

(v) If the terms of the trust do not preclude a person other than the current income beneficiary named in the trust instrument from being awarded an interest in the trust by the order of a court, the trust will qualify as a QSST assuming the trust meets the requirements of paragraphs (j)(1) (i) and (ii) of this section. However, if as a result of such court order, the trust no longer meets the QSST requirements, the trust no longer qualifies as a QSST and the corporation's S election will terminate.

(vi) A trust may qualify as a QSST even though a person other than the current income beneficiary is treated under subpart E as the owner of a part or all of that portion of a trust which does not consist of the S corporation stock, provided the entire trust meets the QSST requirements stated in paragraphs (j)(1) (i) and (ii) of this section.

(3) *Separate and independent shares of a trust.* For purposes of sections 1361 (c) and (d), a substantially separate and independent share of a trust, within the meaning of section 663(c) and the regulations thereunder, is treated as a separate trust. For a separate share which holds S corporation stock to qualify as a QSST, the terms of the trust applicable to that separate share must meet the QSST requirements stated in paragraphs (j)(1) (i) and (ii) of this section.

(4) *Qualified terminable interest property trust.* If property, including S corporation stock, or stock of a corporation that intends to make an S election, is transferred to a trust and an election is made to treat all or a portion of the transferred property as qualified terminable interest property (QTIP) under section 2056(b)(7), the income beneficiary may make the QSST election if the trust meets the requirements set out in paragraphs (j)(1) (i) and (ii) of this section. However, if property is transferred to a QTIP trust under section 2523(f), the income beneficiary may not make a QSST election even if the trust meets the requirements set forth in paragraph (j)(1)(ii) of this section because the grantor would be treated as the owner of the income portion of the trust under section 677. In addition, if property is transferred to a QTIP trust under section 2523(f), the trust does not qualify as a permitted shareholder under section 1361 (c)(2)(A)(i) and paragraph (h)(1)(i) of this section (a qualified subpart E trust), unless under the terms of the QTIP trust, the grantor is treated as the owner of the entire trust under sections 671 to 677. If the grantor ceases to be the income beneficiary's spouse, the trust may qualify as a QSST if it otherwise satisfies the requirements under paragraphs (j)(1) (i) and (ii) of this section.

(5) *Ceasing to meet the QSST requirements.* If a QSST for which an election under section 1361(d)(2) has been made (as described in paragraph (j)(6) of this section) ceases to meet any of the requirements specified in paragraph (j)(1)(ii) of this section, the provisions of this paragraph (j) will cease to apply as of the first day on which that requirement ceases to be met. If such a trust ceases to meet the

income distribution requirement specified in paragraph (j)(1)(i) of this section, but continues to meet all of the requirements in paragraph (j)(1)(ii) of this section, the provisions of this paragraph (j) will cease to apply as of the first day of the first taxable year beginning after the first taxable year for which the trust ceased to meet the income distribution requirement of paragraph (j)(1)(i) of this section. If a corporation's S election is inadvertently terminated as a result of a trust ceasing to meet the QSST requirements, the corporation may request relief under section 1362(f).

(6) *Qualified subchapter S trust election*—(i) *In general.* This paragraph (j)(6) applies to the election provided in section 1361(d)(2) (the QSST election) to treat a QSST (as defined in paragraph (j)(1) of this section) as a trust described in section 1361(c)(2)(A)(i), and thus a permitted shareholder. This election must be made separately with respect to each corporation whose stock is held by the trust. The QSST election does not itself constitute an election as to the status of the corporation; the corporation must make the election provided by section 1362(a) to be an S corporation. Until the effective date of a corporation's S election, the beneficiary is not treated as the owner of the stock of the corporation for purposes of section 678. Any action required by this paragraph (j) to be taken by a person who is under a legal disability by reason of age may be taken by that person's guardian or other legal representative, or if there be none, by that person's natural or adoptive parent.

(ii) *Filing the QSST election.* The current income beneficiary of the trust must make the election by signing and filing with the service center with which the corporation files its income tax return the applicable form or a statement that—

(A) Contains the name, address, and taxpayer identification number of the current income beneficiary, the trust, and the corporation;

(B) Identifies the election as an election made under section 1361(d)(2);

(C) Specifies the date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed);

(D) Specifies the date (or dates) on which the stock of the corporation was transferred to the trust; and

(E) Provides all information and representations necessary to show that:

(1) Under the terms of the trust and applicable local law—

(i) During the life of the current income beneficiary, there will be only

one income beneficiary of the trust (if husband and wife are beneficiaries, that they will file joint returns and that both are U.S. residents or citizens);

(ii) Any corpus distributed during the life of the current income beneficiary may be distributed only to that beneficiary;

(iii) The current beneficiary's income interest in the trust will terminate on the earlier of the beneficiary's death or upon termination of the trust; and

(iv) Upon the termination of the trust during the life of such income beneficiary, the trust will distribute all its assets to such beneficiary.

(2) The trust is required to distribute all of its income currently, or that the trustee will distribute all of its income currently if not so required by the terms of the trust.

(3) No distribution of income or corpus by the trust will be in satisfaction of the grantor's legal obligation to support or maintain the income beneficiary.

(iii) *When to file the QSST election.*

(A) If S corporation stock is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust. If a C corporation has made an election under section 1362(a) to be an S corporation (S election) and, before that corporation's S election is in effect, stock of that corporation is transferred to a trust, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the stock is transferred to the trust.

(B) If a trust holds C corporation stock and that C corporation makes an S election effective for the first day of the taxable year in which the S election is made, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the S election is effective. If a trust holds C corporation stock and that C corporation makes an S election effective for the first day of the taxable year following the taxable year in which the S election is made, the QSST election must be made within the 16-day-and-2-month period beginning on the day that the S election is made. If a trust holds C corporation stock and that corporation makes an S election intending the S election to be effective for the first day of the taxable year in which the S election is made but, under § 1.1362-6(a)(2), such S election is subsequently treated as effective for the first day of the taxable year following the taxable year in which the S election is made, the fact that the QSST election states that the effective date of the QSST election is the first day of the taxable year in which the S

election is made will not cause the QSST election to be ineffective for the first year in which the corporation's S election is effective.

(C) If a trust ceases to be a qualified subpart E trust but also satisfies the requirements of a QSST, the QSST election must be filed within the 16-day-and-2-month period beginning on the date on which the trust ceases to be a qualified subpart E trust. If the estate of the deemed owner of the trust is treated as the shareholder under paragraph (h)(3)(ii) of this section, the QSST election may be filed at any time but no later than the end of the 16-day-and-2-month period beginning on the date on which the estate of the deemed owner ceases to be treated as a shareholder.

(D) If a corporation's S election terminates because of a late QSST election, the corporation may request inadvertent termination relief under section 1362(f). See § 1.1362-4 for rules concerning inadvertent terminations.

(iv) *Protective QSST election when a person is an owner under subpart E.* If the grantor of a trust is treated as the owner under subpart E of all of the trust, or of a portion of the trust which consists of S corporation stock, and the current income beneficiary is not the grantor, the current income beneficiary may not make the QSST election, even if the trust meets the QSST requirements stated in paragraph (j)(1)(ii) of this section. See paragraph (j)(6)(iii)(C) of this section as to when the QSST election may be made. See also paragraph (j)(2)(vi) of this section. However, if the current income beneficiary (or beneficiaries who are husband and wife, if both spouses are U.S. citizens or residents and file a joint return) of a trust is treated under subpart E as owning all or a portion of the trust consisting of S corporation stock, the current income beneficiary (or beneficiaries who are husband and wife, if both spouses are U.S. citizens or residents and file a joint return) may make the QSST election. See *Example 8* of paragraph (k)(1) of this section.

(7) *Treatment as shareholder.* (i) The income beneficiary who makes the QSST election and is treated (for purposes of section 678(a)) as the owner of that portion of the trust that consists of S corporation stock is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) If, upon the death of an income beneficiary, the trust continues in existence, continues to hold S corporation stock but no longer satisfies the QSST requirements, and is not a qualified subpart E trust, then, solely for purposes of section 1361(b)(1), as of the

date of the income beneficiary's death, the estate of that income beneficiary is treated as the shareholder of the S corporation with respect to which the income beneficiary made the QSST election. The estate ordinarily will cease to be treated as the shareholder for purposes of section 1361(b)(1) upon the earlier of the transfer of that stock by the trust or the expiration of the 60-day period beginning on the day of the income beneficiary's death. However, if the entire corpus of the trust is includible in the gross estate of that income beneficiary, the estate will cease to be treated as the shareholder for purposes of section 1361(b)(1) upon the earlier of the transfer of that stock by the trust or the expiration of the 2-year period beginning on the day of the income beneficiary's death. For the purpose of determining whether the entire trust corpus is includible in the gross estate of the income beneficiary, any community property interest in the trust held by the income beneficiary's spouse which arises by reason of applicable U.S. state law is disregarded. During the period that the estate is treated as the shareholder for purposes of section 1361(b)(1), the trust is treated as the shareholder for purposes of sections 1366, 1367, and 1368. If, after the 60-day period, or the 2-year period, if applicable, the trust continues to hold S corporation stock, the corporation's S election terminates. If the termination is inadvertent, the corporation may request relief under section 1362(f).

(8) *Coordination with grantor trust rules.* If a valid QSST election is made, the income beneficiary is treated as the owner, for purposes of section 678(a), of that portion of the trust that consists of the stock of the S corporation for which the QSST election was made. However, solely for purposes of applying the preceding sentence to a QSST, an income beneficiary who is a deemed section 678 owner only by reason of section 1361(d)(1) will not be treated as the owner of the S corporation stock in determining and attributing the federal income tax consequences of a disposition of the stock by the QSST. For example, if the disposition is a sale, the QSST election terminates as to the stock sold and any gain or loss recognized on the sale will be that of the trust, not the income beneficiary. Similarly, if a QSST distributes its S corporation stock to the income beneficiary, the QSST election terminates as to the distributed stock and the consequences of the distribution are determined by reference to the status of the trust apart from the income beneficiary's terminating ownership

status under sections 678 and 1361(d)(1). The portions of the trust other than the portion consisting of S corporation stock are subject to subparts A through D of subchapter J of chapter 1, except as otherwise required by subpart E of the Internal Revenue Code.

(9) *Successive income beneficiary.* (i) If the income beneficiary of a QSST who made a QSST election dies, each successive income beneficiary of that trust is treated as consenting to the election unless a successive income beneficiary affirmatively refuses to consent to the election. For this purpose, the term *successive income beneficiary* includes a beneficiary of a trust whose interest is a separate share within the meaning of section 663(c), but does not include any beneficiary of a trust that is created upon the death of the income beneficiary of the QSST and which is a new trust under local law.

(ii) The application of this paragraph (j)(9) is illustrated by the following examples:

Example 1. Shares of stock in Corporation X, an S corporation, are held by Trust A, a QSST for which a QSST election was made. B is the sole income beneficiary of Trust A. On B's death, under the terms of Trust A, J and K become the current income beneficiaries of Trust A. J and K each hold a separate and independent share of Trust A within the meaning of section 663(c). J and K are successive income beneficiaries of Trust A, and they are treated as consenting to B's QSST election.

Example 2. Assume the same facts as in *Example 1*, except that on B's death, under the terms of Trust A and local law, Trust A terminates and the principal is to be divided equally and held in newly created Trust B and Trust C. The sole income beneficiaries of Trust B and Trust C are J and K, respectively. Because Trust A terminated, J and K are not successive income beneficiaries of Trust A. J and K must make QSST elections for their respective trusts to qualify as QSSTs, if they qualify. The result is the same whether or not the trustee of Trusts B and C is the same as the trustee of Trust A.

(10) *Affirmative refusal to consent—*

(i) *Required statement.* A successive income beneficiary of a QSST must make an affirmative refusal to consent by signing and filing with the service center where the corporation files its income tax return a statement that—

(A) Contains the name, address, and taxpayer identification number of the successive income beneficiary, the trust, and the corporation for which the election was made;

(B) Identifies the refusal as an affirmative refusal to consent under section 1361(d)(2); and

(C) Sets forth the date on which the successive income beneficiary became the income beneficiary.

(ii) *Filing date and effectiveness.* The affirmative refusal to consent must be filed within 15 days and 2 months after the date on which the successive income beneficiary becomes the income beneficiary. The affirmative refusal to consent will be effective as of the date on which the successive income beneficiary becomes the current income beneficiary.

(11) *Revocation of QSST election.* A QSST election may be revoked only with the consent of the Commissioner. The Commissioner will not grant a revocation when one of its purposes is the avoidance of federal income taxes or when the taxable year is closed. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure. The application must be signed by the current income beneficiary and must—

(i) Contain the name, address, and taxpayer identification number of the current income beneficiary, the trust, and the corporation with respect to which the QSST election was made;

(ii) Identify the election being revoked as an election made under section 1361(d)(2); and

(iii) Explain why the current income beneficiary seeks to revoke the QSST election and indicate that the beneficiary understands the consequences of the revocation.

(k)(1) *Examples.* The provisions of paragraphs (h) and (j) of this section are illustrated by the following examples in which it is assumed that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) *Terms of the trust.* In 1996, A and A's spouse, B, created an *intervivos* trust and each funded the trust with separately owned stock of an S corporation. Under the terms of the trust, A and B designated themselves as the income beneficiaries and each, individually, retained the power to amend or revoke the trust with respect to the trust assets attributable to their respective trust contributions. Upon A's death, the trust is to be divided into two separate parts; one part attributable to the assets A contributed to the trust and one part attributable to B's contributions. Before the trust is divided, and during the administration of A's estate, all trust income is payable to B. The part of the trust attributable to B's contributions is to continue in trust under the terms of which B is designated as the sole income beneficiary and retains the power to amend or revoke the trust. The part attributable to A's contributions is to be divided into two separate trusts both of which have B as the sole income beneficiary for life. One trust, the *Credit Shelter Trust*, is to be funded with an amount that can pass free of estate tax by reason of A's available estate tax unified

credit. The terms of the Credit Shelter Trust meet the requirements of section 1361(d)(3) as a QSST. The balance of the property passes to a Marital Trust, the terms of which satisfy the requirements of section 1361(d)(3) as a QSST and section 2056(b)(7) as QTIP. The appropriate fiduciary under § 20.2056(b)-7(b)(3) is directed to make an election under section 2056(b)(7).

(ii) *Results after deemed owner's death.* On February 3, 1997, A dies and the portion of the trust assets attributable to A's contributions including the S stock contributed by A, is includible in A's gross estate under sections 2036 and 2038. During the administration of A's estate, the trust holds the S corporation stock. Under section 1361(c)(2)(B)(ii), A's estate is treated as the shareholder of the S corporation stock that was included in A's gross estate for purposes of section 1361(b)(1); however, for purposes of sections 1366, 1367, and 1368, the trust is treated as the shareholder. B's part of the trust continues to be a qualified subpart E trust of which B is the owner under sections 676 and 677. B, therefore, continues to be treated as the shareholder of the S corporation stock in that portion of the trust. On May 13, 1997, during the continuing administration of A's estate, the trust is divided into separate trusts in accordance with the terms of the trust instrument. The S corporation stock that was included in A's gross estate is distributed to the Marital Trust and to the Credit Shelter Trust. A's estate will cease to be treated as the shareholder of the S corporation under section 1361(c)(2)(B)(ii) on May 13, 1997 (the date on which the S corporation stock was transferred to the trusts). B, as the income beneficiary of the Marital Trust and the Credit Shelter Trust, must make the QSST election for each trust by July 27, 1997 (the end of the 16-day-and-2-month period beginning on the date the estate ceases to be treated as a shareholder) to have the trusts become permitted shareholders of the S corporation.

Example 2. (i) Qualified subpart E trust as shareholder. In 1997, A, an individual established a trust and transferred to the trust A's shares of stock of Corporation M, an S corporation. A has the power to revoke the entire trust. The terms of the trust require that all income be paid to B and otherwise meet the requirements of a QSST under section 1361(d)(3). The trust will continue in existence after A's death. The trust is a qualified subpart E trust described in section 1361(c)(2)(A)(i) during A's life, and A (not the trust) is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) *Trust ceasing to be a qualified subpart E trust on deemed owner's death.* Assume the same facts as paragraph (i) of this *Example 2*, except that A dies without having exercised A's power to revoke. Upon A's death, the trust ceases to be a qualified subpart E trust described in section 1361(c)(2)(A)(i). A's estate (and not the trust) is treated as the shareholder for purposes of section 1361(b)(1). Because the entire corpus of the trust is includible in A's gross estate under section 2038, A's estate will cease to be treated as the shareholder for purposes of

section 1361(b)(1) upon the earlier of the transfer of the Corporation M stock by the trust (other than to A's estate), the expiration of the 2-year period beginning on the day of A's death, or the effective date of a QSST election if the trust qualifies as a QSST. However, until that time, because the trust continues in existence after A's death and will receive any distributions with respect to the stock it holds, the trust is treated as the shareholder for purposes of sections 1366, 1367, and 1368. After the 2-year period, if no QSST election is made, the corporation ceases to be an S corporation, but the trust continues as the shareholder of a C corporation.

(iii) *Trust continuing to be a qualified subpart E trust on deemed owner's death.* Assume the same facts as paragraph (ii) of this *Example 2*, except that the terms of the trust also provide that if A does not exercise the power to revoke before A's death, B will have the sole power to withdraw all trust property at any time after A's death. The trust continues to qualify as a qualified subpart E trust after A's death because, upon A's death, B is deemed to be the owner of the entire trust under section 678. Because the trust does not cease to be a qualified subpart E trust upon A's death, B (and not A's estate) is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368. Since the trust qualifies as a QSST, B may make a protective QSST election under paragraph (j)(6)(iv) of this section.

Example 3. 60-day rule under section 1361(c)(2)(A)(ii) and (iii). F owns stock of Corporation P, an S corporation. In addition, F is the deemed owner of a qualified subpart E trust that holds stock in Corporation O, an S corporation. F dies on July 1, 1996. The trust continues in existence after F's death but is no longer a qualified subpart E trust. The entire corpus of the trust is not includible in F's gross estate. On August 1, 1996, F's shares of stock in Corporation P are transferred to the trust pursuant to the terms of F's will. Because the stock of Corporation P was not held by the trust when F died, section 1361(c)(2)(A)(ii) does not apply with respect to that stock. Under section 1361(c)(2)(A)(iii), the last day on which F's estate could be treated as a permitted shareholder of Corporation P is September 29, 1996 (that is, the last day of the 60-day period that begins on the date of the transfer from the estate to the trust). With respect to the shares of stock in Corporation O held by the trust at the time of F's death, section 1361(c)(2)(A)(ii) applies and the last day on which F's estate could be treated as a permitted shareholder of Corporation O is August 29, 1996 (that is, the last day of the 60-day period that begins on the date of F's death).

Example 4. (i) QSST when terms do not require current distribution of income. Corporation Q, a calendar year corporation, makes an election to be an S corporation effective for calendar year 1996. On July 1, 1996, G, a shareholder of Corporation Q, transfers G's shares of Corporation Q stock to a trust with H as its current income beneficiary. The terms of the trust otherwise satisfy the QSST requirements, but authorize the trustee in its discretion to accumulate or

distribute the trust income. However, the trust, which uses the calendar year as its taxable year, initially satisfies the income distribution requirement because the trustee is currently distributing all of the income. On August 1, 1996, H makes a QSST election with respect to Corporation Q that is effective as of July 1, 1996. Accordingly, as of July 1, 1996, the trust is a QSST and H is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) *QSST when trust income is not distributed currently.* Assume the same facts as in paragraph (i) of this *Example 4*, except that, for the taxable year ending on December 31, 1997, the trustee accumulates some trust income. The trust ceases to be a QSST on January 1, 1998, because the trust failed to distribute all of its income for the taxable year ending December 31, 1997. Thus, Corporation Q ceases to be an S corporation as of January 1, 1998, because the trust is not a permitted shareholder.

(iii) *QSST when a person other than the current income beneficiary may receive trust corpus.* Assume the same facts as in paragraph (i) of this *Example 4*, except that H dies on November 1, 1996. Under the terms of the trust, after H's death, L is the income beneficiary of the trust and the trustee is authorized to distribute trust corpus to L as well as to J. The trust ceases to be a QSST as of November 1, 1996, because corpus distributions may be made to someone other than L, the current (successive) income beneficiary. Under section 1361(c)(2)(A)(ii), H's estate (and not the trust) is considered to be the shareholder for purposes of section 1361(b)(1) for the 60-day period beginning on November 1, 1996. However, because the trust continues in existence after H's death and will receive any distributions from the corporation, the trust (and not H's estate) is treated as the shareholder for purposes of sections 1366, 1367, and 1368, during that 60-day period. After the 60-day period, the S election terminates and the trust continues as a shareholder of a C corporation. If the termination is inadvertent, Corporation Q may request relief under section 1362(f). However, the S election would not terminate if the trustee distributed all Corporation Q shares to L, J, or both before December 30, 1996, (the last day of the 60-day period) assuming that neither L nor J becomes the 36th shareholder of Corporation Q as a result of the distribution.

Example 5. QSST when current income beneficiary assigns the income interest to a person not named in the trust. On January 1, 1996, stock of Corporation R, a calendar year S corporation, is transferred to a trust that satisfies all of the requirements to be a QSST. Neither the terms of the trust nor local law preclude the current income beneficiary, K, from assigning K's income interest in the trust. K files a timely QSST election that is effective January 1, 1996. On July 1, 1996, K assigns the income interest in the trust to N. Under applicable state law, the trustee is bound as a result of the assignment to distribute the trust income to N. Thus, the QSST will cease to qualify as a QSST under section 1361(d)(3)(A)(iii) because N's interest will terminate on K's death (rather than on N's death). Accordingly, as of the date of the

assignment, the trust ceases to be a QSST and Corporation R ceases to be an S corporation.

Example 6. QSST when terms fail to provide for distribution of trust assets upon termination during life of current income beneficiary. A contributes S corporation stock to a trust the terms of which provide for one income beneficiary, annual distributions of income, discretionary invasion of corpus only for the benefit of the income beneficiary, and termination of the trust only upon the death of the current income beneficiary. Since the trust can terminate only upon the death of the income beneficiary, the governing instrument fails to provide for any distribution of trust assets during the income beneficiary's life. The governing instrument's silence on this point does not disqualify the trust under section 1361(d)(3)(A)(ii) or (iv).

Example 7. QSST when settlor of trust retains a reversion in the trust. On January 10, 1996, M transfers to a trust shares of stock in corporation X, an S corporation. D, who is 13 years old and not a lineal descendant of M, is the sole income beneficiary of the trust. On termination of the trust, the principal (including the X shares) is to revert to M. The trust instrument provides that the trust will terminate upon the earlier of D's death or D's 21st birthday. The terms of the trust satisfy all of the requirements to be a QSST except those of section 1361(d)(3)(A)(ii) (that corpus may be distributed during the current income beneficiary's life only to that beneficiary) and (iv) (that, upon termination of the trust during the life of the current income beneficiary, the corpus, must be distributed to that beneficiary). On February 10, 1996, M makes a gift of M's reversionary interest to D. Until M assigns M's reversion in the trust to D, M is deemed to own the entire trust under section 673(a) and the trust is a qualified subpart E trust. For purposes of section 1361(b)(1), 1366, 1367, and 1368, M is the shareholder of X. The trust ceases to be a qualified subpart E trust on February 10, 1996. Assuming that, by virtue of the assignment to D of M's reversionary interest, D (upon his 21st birthday) or D's estate (in the case of D's death before reaching age 21) is entitled under local law to receive the trust principal, the trust will be deemed as of February 10, 1996, to have satisfied the conditions of section 1361(d)(3)(A)(ii) and (iv) even though the terms of the trust do not explicitly so provide. D must make a QSST election by no later than April 25, 1996 (the end of the 16-day-and-2-month period that begins on February 10, 1996, the date on which the X stock is deemed transferred to the trust by M). See example (5) of § 1.1001-2(c) of the regulations.

Example 8. QSST when the income beneficiary has the power to withdraw corpus. On January 1, 1996, F transfers stock of an S corporation to an irrevocable trust whose income beneficiary is F's son, C. Under the terms of the trust, C is given the noncumulative power to withdraw from the corpus of the trust the greater of \$5,000 or 5 percent of the value of the corpus on a yearly basis. The terms of the trust meet the QSST requirements. Assuming the trust distributions are not in satisfaction of F's

legal obligation to support C, the trust qualifies as a QSST. C (or if C is a minor, C's legal representative) must make the QSST election no later than March 16, 1996 (the end of the 16-day-and-2-month period that begins on the date the stock is transferred to the trust).

Example 9. (i) Filing the QSST election. On January 1, 1996, stock of Corporation T, a calendar year C corporation, is transferred to a trust that satisfies all of the requirements to be a QSST. On January 31, 1996, Corporation T files an election to be an S corporation that is to be effective for its taxable year beginning on January 1, 1996. In order for the S election to be effective for the 1996 taxable year, the QSST election must be effective January 1, 1996, and must be filed within the period beginning on January 1, 1996, and ending March 16, 1996 (the 16-day-and-2-month period beginning on the first day of the first taxable year for which the election to be an S corporation is intended to be effective).

(ii) **QSST election when the S election is filed late.** Assume the same facts as in paragraph (i) of this Example 9, except that Corporation T's election to be an S corporation is filed on April 1, 1996 (after the 15th day of the 3rd month of the first taxable year for which it is to be effective but before the end of that taxable year). Because the election to be an S corporation is not timely filed for the 1996 taxable year, under section 1362(b)(3), the S election is treated as made for the taxable year beginning on January 1, 1997. The QSST election must be filed within the 16-day-and-2-month period beginning on April 1, 1996, the date the S election was made, and ending on June 16, 1996.

Example 10. (i) Transfers to QTIP trust. On June 1, 1996, A transferred S corporation stock to a trust for the benefit of A's spouse B, the terms of which satisfy the requirements of section 2523(f)(2) as qualified terminable interest property. Under the terms of the trust, B is the sole income beneficiary for life. In addition, corpus may be distributed to B, at the trustee's discretion, during B's lifetime. However, under section 677(a), A is treated as the owner of the trust. Accordingly, the trust is a permitted shareholder of the S corporation under section 1361(c)(2)(A)(i), and A is treated as the shareholder for purposes of sections 1361(b)(1), 1366, 1367, and 1368.

(ii) **Transfers to QTIP trust where husband and wife divorce.** Assume the same facts as in paragraph (i) of this Example 10, except that A and B divorce on May 2, 1997. Under section 682, A ceases to be treated as the owner of the trust under section 677(a) because A and B are no longer husband and wife. Under section 682, after the divorce, B is the income beneficiary of the trust and corpus of the trust may only be distributed to B. Accordingly, assuming the trust otherwise meets the requirements of section 1361(d)(3), B must make the QSST election within 2 months and 15 days after the date of the divorce.

(iii) **Transfers to QTIP trust where no corpus distribution is permitted.** Assume the same facts as in paragraph (i) of this Example 10, except that the terms of the trust do not

permit corpus to be distributed to B and require its retention by the trust for distribution to A and B's surviving children after the death of B. Under section 677, A is treated as the owner of the ordinary income portion of the trust, but the trust will be subject to tax on gross income allocable to corpus. Accordingly, the trust does not qualify as an eligible shareholder of the S corporation because it is neither a qualified subpart E trust nor a QSST.

(2) **Effective date—(i) In general.** Paragraph (a), and paragraphs (c) through (k) of this section apply to taxable years of a corporation beginning after July 21, 1995. For taxable years beginning on or before July 21, 1995, to which paragraph (a), and paragraphs (c) through (k) do not apply, see § 18.1361-1 of this chapter (as contained in the 26 CFR edition revised April 1, 1995).

(ii) **Exception.** If a QSST has sold or otherwise disposed of all or a portion of its S corporation stock in a tax year that is open for the QSST and the income beneficiary but on or before July 21, 1995, the QSST and the income beneficiary may both treat the transaction as if the beneficiary was the owner of the stock sold or disposed of, and thus recognize any gain or loss, or as if the QSST was the owner of the stock sold or disposed of as described in paragraph (j)(8) of this section. This exception applies only if the QSST and the income beneficiary take consistent reporting positions. The QSST and the income beneficiary must disclose by a statement on their respective returns (or amended returns), that they are taking consistent reporting positions.

PART 18—TEMPORARY INCOME TAX REGULATIONS UNDER THE SUBCHAPTER S REVISION ACT OF 1982

Par. 4. The authority citation for part 18 is revised to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 18.0 is revised to read as follows:

§ 18.0 Effective date of temporary regulations under the Subchapter S Revision Act of 1982.

The temporary regulations provided under § 18.1377-1, 18.1379-1, and 18.1379-2 are effective with respect to taxable years beginning after 1982, and the temporary regulations provided under § 18.1378-1 are effective with respect to elections made after October 19, 1982.

§§ 18.1361-1 and 18.1366-5 [Removed]

Par. 6. Sections 18.1361-1 and 18.1366-5 are removed.

§ 18.1378-1 [Amended]

Par. 7. Section 18.1378-1 is amended as follows:

1. The fourth sentence of paragraph (b)(2)(i) is amended by removing the language “§ 18.1362-1(b)” and adding the language “§ 1.1362-6(b)(2)(ii) of this chapter” in its place.

2. The fifth sentence of paragraph (b)(2)(i) is removed.

3. The second sentence of paragraph (b)(2)(ii) is amended by removing the language “§ 18.1362-1(a)” and adding the language “§ 1.1362-6(b)(2)(i) of this chapter” in its place.

4. Paragraph (b)(3) is removed.

5. Paragraph (c) is removed and reserved.

6. Paragraph (e) is removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 8. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 9. Section 602.101, paragraph (c) is amended by removing the entry for 18.1361-1 from the table and adding the entry “1.1361-1 . . . 1545-0731” in numerical order to the table.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: May 9, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95-17914 Filed 7-20-95; 8:45 am]

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26 CFR Parts 1 and 301

[TD 8603]

RIN 1545-AT57

Methods of Signing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the signing of returns, statements, or other documents. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective on July 21, 1995.

FOR FURTHER INFORMATION CONTACT: Celia Gabrysh, (202) 622-4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**Background**

This document contains amendments to the Income Tax Regulations (26 CFR part 1) and the Procedure and Administration Regulations (26 CFR part 301) that relate to signing returns, statements, and other documents.

Explanation of Provisions

Section 6061 provides in part that “. . . any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary.” Traditionally, the IRS has accepted pen-to-paper signatures. The Service will prescribe additional methods of signing to be used when electronically filing returns and other documents.

The temporary regulations clarify that the IRS may prescribe the specific method of signing any return, statement, or other document. The temporary regulations also provide that the IRS may require a return preparer to use a method of signing other than a pen-to-paper signature or a facsimile signature stamp of the person filing a return, statement, or other document.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Celia Gabrysh, Office of Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects**26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6695-1T is added to read as follows:

§ 1.6695-1T Other assessable penalties with respect to the preparation of income tax returns for other persons (temporary).

(a) [Reserved].

(b) Unless the Secretary has prescribed another method of signing pursuant to § 301.6061-1T(b) on or after July 21, 1995, an individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code (Code) or claim for refund of tax under subtitle A of the Code shall manually sign the return or claim for refund (which may be a photocopy) in the appropriate space provided on the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6061-1T also issued under 26 U.S.C. 6061.

Par. 2. Section 301.6061-1T is added to read as follows:

§ 301.6061-1T Signing of returns and other documents (temporary).

(a) [Reserved].

(b) *Method of signing.* The Secretary may prescribe in forms, instructions, or other appropriate guidance the method of signing any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations.

(c) *Effective date.* This section is effective on July 21, 1995.